

COOK COUNTY SHERIFF'S MERIT BOARD

SHERIFF OF COOK COUNTY,

vs.

JAMIE O'MALLEY,
Deputy Sheriff,
Employee # [REDACTED]
Star #11146.

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) Docket # 1679
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DECISION

THIS MATTER COMING ON to be heard pursuant to notice before Jennifer E. Bae, a Board Member, and the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction:

1. Jamie O'Malley (herein after "Respondent") holds a position as a Deputy Sheriff which involves duties and responsibilities to the public.
2. Each member of the Cook County Sheriff's Merit Board (hereinafter "Board") has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term.
3. The Board has jurisdiction of the subject matter of the parties in accordance with Chapter 55 of the Illinois Compiled Statutes.
4. The Respondent was personally served with a copy of the Complaint/Amended Complaint and Notice of Hearing. He appeared before the Board to contest the charges contained in the complaint/amended complaint.
5. The Board has heard the evidence presented by the Sheriff, the Respondent, and evaluated the credibility of the witnesses along with supporting documents.

Background:

By Complaint dated January 7, 2013 (Amended Complaint dated November 3, 2014), Sheriff Thomas J. Dart, sought the termination of the Respondent. The complaint alleges that Respondent violated the Rules and Regulations and General Orders of the Cook County Department of Corrections and Rules and Regulations of the Cook County Merit Board, specifically:

GENERAL ORDER 3401.1

V. RESPONSIBILITY

It is the responsibility of every member of the C.S.D. to conform to the rules of conduct.

VI. RULES AND REGULATIONS FOR ALL SWORN OFFICERS AND CIVILIAN MEMBERS

A. Compliance with Laws and Ordinances

- 1. Members will uphold the Constitution of the United States and the State of Illinois obey all federal, state and local laws in which jurisdiction the member is present and comply with court decisions and orders of courts having jurisdiction.**
- 2. A conviction for the violation of any law will be prima facie evidence of a violation of this directive.**

B. Conduct on Duty and Off-Duty

- 1. Members will conduct themselves on and off-duty in such manner to reflect favorably on the department. Members, whether on or off-duty, will not engage in conduct which discredits the integrity of the department its employees or the member or which impairs the operations of the department. Such actions will constitute conduct unbecoming an officer.**
- 2.**
- 3. Members will not use their official position official identification cards, stars or hat shields for:**

c. avoiding consequences of illegal acts.

K. Intoxicants, Controlled Substances and Narcotics

- 4.**
- 5. Members, while off-duty will refrain from consuming intoxicating beverages to the extent that it results in impairment, intoxication, obnoxious or offensive behavior which discredits them or the department, or renders the members unfit to report for their next regular tour of duty.**

GENERAL ORDER 3406

V. PROCEDURES

Failure to abide by the conditions and standards as set forth in this Code of Ethics (see enclosure) will be considered a violation of the Rules of Conduct and may result in disciplinary action as provided in the Rules and Regulations of the Cook County Sheriff's Merit Board or the Collective Bargaining Agreement.

GENERAL ORDER 8403.2

II. POLICY

6. Department members will refrain from carrying a firearm when:

1. there is likelihood that the member will be consuming alcoholic beverages.

COOK COUNTY SHERIFF'S DEPARTMENT MERIT BOARD RULES AND REGULATIONS, in its entirety, including but not limited to, the following subparts:

Article X, Paragraph B

No Police Officer of the Cook County Sheriff's Police Department, nor any Correctional Officer of the Cook County Department of Corrections, nor any Deputy Sheriff of the Cook County Sheriff's Court Services Department shall:

1. violate any law or statute of any State or of the United States of America.
- 2.
3. violate any of the general orders, special orders, directives or rules and regulations of the Cook County Sheriff's Office.

Issues Presented:

Whether the actions of the Respondent violated any of the General Orders and Rules and Regulations set forth above and what if any discipline is appropriate if a violation occurred.

Evidence Presented:

A hearing was conducted on November 24, 2014 at the Cook County Administration Building, 69 W. Washington Street, Room 1100, Chicago, Illinois. Present were Assistant State's Attorney [REDACTED] and Assistant General Counsel [REDACTED] on behalf of the Cook County Sheriff and Attorney [REDACTED] on behalf of the Respondent.

Exhibits moved into evidence:

- Sheriff's 1 Trial transcripts of the criminal case 12 CR 14950 – there was a stipulation to the testimonies from the criminal trial
- Sheriff's 2 Stipulation that Respondent was found guilty of misdemeanor DUI (625 ILCS 5/11-501(a)(1) under case 12 CR 14950 and DVDs from the Franklin Police Dept
- Sheriff's 3 OPR Report

- Union 1 Complimentary and Disciplinary history of the Respondent
- Union 2 Document showing 2 days suspension w/o pay August 4th and 5th, 2006
- Union 3 Document showing 1 day suspension w/o pay December 13, 2005
- Union 4 SPAR dated September 19, 2008
- Union 5 Document showing 2 day suspension w/o pay January 13, 2009
- Union 6 Portion of the DVD from the Franklin Police Dept – field sobriety tests
- Union 7 Portion of the DVD from the Franklin Police Dept – inside the squad car
- Union 8 De-deputized/relieved document from OPR
- Union 9 Memo from the Personnel Department regarding Respondent's employment status
- Union 10 General Order G.O. 3401
- Union 11 Collective Bargaining Agreement

Sheriff presented the following witnesses:

██████████ (herein after "██████████" testified that he is a senior investigator for the OPR and had been at his current job for the last 5 years. He was a police officer for the Evergreen Police Department for 28 years prior. ██████████ was assigned to assist Director ██████████ (herein after "██████████" to investigate this matter.

During the investigation, ██████████ learned that Respondent was involved in an accident in Franklin Park on July 22, 2012 where a man by the name ██████████ died. ██████████ interviewed Respondent on August 10, 2012 at the OPR's office. Present were Respondent, Respondent's attorney ██████████ and ██████████. During the meeting, Respondent's statements were reduced to a writing marked as Sheriff's Exhibit 3. Respondent admitted to drinking 2 to 3 beers at a block party 40 to 60 minutes prior to driving on Mannheim in Franklin Park heading home; he had BAC of .124; he was carrying his Glock 17 – 9 millimeter on his waist during the party and the accident; and that he was arrested. The investigation was sustained and ██████████ and Executive Director ██████████ recommended separation.

On cross-examination, ██████████ admitted that he was not at the scene when the accident occurred and that he was assigned to this matter on July 24, 2012. He knew that the misdemeanor DUI charge was upgraded to felony. ██████████ stated that he did not interviewed Officer ██████████ or any other officers that were on the scene. He learned from Officer ██████████ supplemental report that Respondent said, "I'm a sheriff, please help me" to Officer ██████████. ██████████ admitted that he did not ask Respondent whether he made the statement. ██████████ did not remember when the recommendation for separation was made but he did remember that it was during the pendency of the criminal matter.

Respondent was called as an adverse witness:

JAMIE O'MALLEY:

Respondent stated that he had started working for the CCSO on June 16 2003. On July 21 2012, he and his wife went to a block/birthday party in Edison Park near Devon and Newcastle. He packed a cooler full of beer (Coors Light – 24 cans) and took it to the party. He believed that he had consumed 2 to 3 beers but that he was not counting and he could have consumed more. The last beer he consumed was around 1 a.m. Respondent stated that there were about 30 to 40 people on the block attending the party and the cooler was placed on a lawn for everyone to share. He learned later that his wife had informed the police that she consumed 4 beers.

At around 1:40 a.m., near 3100 N. Mannheim Road, Respondent struck a man. Respondent said that he had not seen the man prior to the impact and that he got out of his vehicle to attend to the man. The man did not respond to Respondent's question. Respondent admitted that he did not call 911. Respondent did perform field sobriety tests but was not offered breath test on the scene. Respondent denied making a statement of "Can you please help me? I'm a sheriff" to Officer [REDACTED]. Respondent stated that he told Officer [REDACTED] that he had a duty weapon on his body because he worked for the CCSO. Respondent said that he had never seen Officer [REDACTED] prior to the accident. He was later transported to the Elmhurst Hospital and submitted to blood and urine tests. He learned that he had .124 BAC and that the pedestrian, [REDACTED] had died. Respondent was interviewed by the OPR on August 10, 2012. Respondent had a bench trial before the Honorable Judge Daleo and was found not guilty of aggravated DUI but that he was found guilty of misdemeanor DUI sentenced to 2 years of probation with 300 hours of community service, victim impact program, and treatment classes.

On cross-examination, Respondent said he did not remember how many beers were left in the cooler. He believed that he was not impaired to drive because he did not exhibit any signs of impairment. He did not believe his wife was impaired either and since she had a valid driver's license, there was nothing preventing her from driving. Respondent admitted that he could have drunk more than 2 to 3 beers because he was not counting.

Respondent did not call 911 because within 15 to 20 seconds from the accident, a Cook County Sheriff Police appeared and ordered him to go back into his vehicle. Respondent said that he told Officer [REDACTED] he had a sidearm and worked for the CCSO because he did not want him to "freak out" when he patted him down. Respondent said that OPR never asked him about this statement. Respondent was upset when he made the statement to OPR on August 10, 2012 but the statement (Sheriff's Exhibit 3) was true and accurate.

Respondent had not started his treatment or community service because he was waiting to be placed by the TASC. He was sentenced on October 6, 2014.

Respondent testified on his behalf:

JAIME O'MALLEY:

Respondent is 39 years old, married for 3 ½ years with a child, [REDACTED] (14 months old). He said he had been suspended without pay for almost 2 years. He was hired as a deputy sheriff on June 16, 2003 and received 3 months training. He had various suspensions and

SPAR on the job (Union Exhibits 1 through 5). Respondent said he was aware of the General Order that prohibited him from having his gun when drinking or when he was going to be impaired. He did not believe that he was going to be impaired when he brought his gun to the block party.

Respondent testified that on July 21, 2012, he worked at the bond court until 4 p.m.; he went home to Franklin Park, watched TV, and packed a cooler with a case of Coors Light; he did not consume any alcohol while at home; he and his wife left home to attend a memorial at Forest Preserve Drive and Addison; and arrived at the block party in Edison Park around 9 pm with the cooler. At the party, Respondent said he ate a cupcake and drank few beers. Little after 1:00 am, Respondent and his wife left the party. While traveling on Mannheim Road, Respondent said he had an accident. He first did not know what he hit but found out that it was a male Hispanic around 30 to 40 years of age wearing a black shirt and cutoff jeans. Respondent asked the man if he was ok and the man appeared to be alive at that time. Within few seconds, Respondent said a Cook County Sheriff Police arrived and told him to go back to his truck. Soon thereafter, a Franklin Police officer arrived and asked for a driver's license and registration. Respondent provided these items and was asked to perform field sobriety tests. Respondent testified that he was able to perform all sobriety tests even without having Officer [REDACTED] demonstrate to him. In the video that was presented, during the field sobriety tests, there was a 3 minute period where no one was seen. Respondent believed that this was shortly after he informed Officer [REDACTED] about his sidearm.

Respondent was placed under arrest and taken to the Franklin Police Department. While on their way to the police station, Respondent asked Officer [REDACTED] if he could ask him a question. Officer [REDACTED] told him to wait to talk to a detective or at least until they get to the station. A recording of this conversation was marked as Union Exhibit 7. Respondent then said that he refused to take a breath test at the station because he did not know if the machine was calibrated properly. He, however, consented to give blood and urine and was taken to the Elmhurst Hospital. He was then taken back to the police station and placed in a holding cell for 3 days. He believed that his BAC was .124. He knew that the legal limit was .08 and that the man he hit had deceased. He was charged with aggravated DUI involving death, reckless homicide and failure to reduce speed. He was released on bond until the criminal trial. Respondent was de-deputized on July 24, 2012. After his interview with the OPR, Respondent received a letter dated August 13, 2012 informing him that he was placed on suspension with pay. He was placed on non-pay status on January 3, 2013. Respondent asked for his job back because he had forged great relationships with his co-workers and supervisors; that he should be punished for driving while BAC was over the limit but that he would never get over what had happened for the rest of his life; that he would never put himself in this situation again; and that he no longer drinks because he had been diagnosed with ulcerative colitis.

On cross-examination, Respondent testified that he never said, "Can you please help me? I'm a sheriff" to Officer [REDACTED]. During the field sobriety tests, when no one was on the video for 3 minutes, Respondent said it could have been when he told Officer [REDACTED] about his gun. He did not know if Officer [REDACTED] went to talk to his fellow officers at the scene. Respondent did not have any reason to believe that the breath machine was not calibrated but he did submit to blood an hour and half after the accident. Respondent did have a Loudermill hearing and was told that he could work. Soon thereafter, his attorney informed him that the ruling was overturned and he was on unpaid suspension.

Findings/Conclusion of the Law:

Based on the exhibits and testimony at the hearing, the Board finds that Respondent violated General Order 3401.1 V, VI A 1 and 2, VI B 1 and 3; General Order 3406 V; General Order 8403.2 II C 1; and Cook County Sheriff's Department Merit Board Rules and Regulations Article X, Paragraph B 1 and 3.

The Board finds that the testimony of the Respondent to be truthful but at times self-serving. Respondent testified that he knew of the General Order that prohibited him from carrying his weapon when drinking or when he was going to be impaired. Obviously when Respondent packed a cooler full of beer that was going to be shared at the block party; he knew he was going to drink those beers. Respondent's argument was that because he was not impaired demonstrated by the fact that he was able to perform field sobriety tests, he did not violate General Orders. However, Respondent was convicted of driving under the influence of alcohol with BAC of .124 which was taken 1 ½ hours after the accident involving a death. Respondent failed to conform to rules of conduct and comply with laws and ordinance when he was convicted of 625 ILCS 5/11-501 (a)(1). The Board finds that Respondent did try to use his position when he said, "Can you please help me? I'm a sheriff" to Officer [REDACTED] and that Respondent carried his firearm when there was likelihood that he would be consuming alcoholic beverages.

Order:

Wherefore, based on the Board's findings, Respondent is terminated from the Cook County Sheriff's Office effective January 3, 2013.


Jamie O'Malley Docket #1679


JAMES P. NALLY, Chairman


BYRON BRAZIER, Vice-Chairman


BRIAN RIORDAN, Board Member


JOHN J. DALICANDRO, Secretary


PAT BRADY, Board Member


KIM R. WIDUP, Board Member


JOHN R. ROSALES, Board Member


VINCENT T. WINTERS, Board Member


JENNIFER E. BAE, Board Member

Dated: March 27, 2015